IN THE HIGH COURT OF JUDICATURE AT BILASPUR:C.G.

W.P.no. 4369 **/2004**

PETITIONER :
(Plaintiff)

Singhania Buildcon Pvt. Ltd., (a company regd. under The Companies Act, 1956), through director Subodh Singhania, office at Amanaka, G.E.Road, Raipur, Chhattisgarh.

VERSUS.

RESPONDENTS :
(Defendants)

1. Horilal Tamarkar, s/o Jhumaklal Tamarkar, r/o Purani Basati, Raipur, C.G.

2. Satish Kumar Tiwari s/o Ramesh Kumar Tiwari, r/o Bania para, Purani Basti, Raipur,C.G.

3. Smt. Jyoti Agarwal w/o Sanjay Agarwal, r/o Choube colony, Raipur,C.G.

4. State of Chhattisgarh, through Collector, Raipur,C.G.

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTIN OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/ CERTIORARAI/ PROHIBITION OR DIRECTIVE /ORDERS IN THE LIKE NATURE ETC.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	4.3.2005 Shri Bhisma Kingar, counsel for the petitioner. None appears on behalf of respondent No.1 to 3. Affidavit of one Subodh Singhania has been filed regarding service on respondent No.1 personally and service on the advocates of respondent Nos.2 & 3 appearing before the court below. Therefore, it is treated that respondent No.1 to 3 are not present inspite of service. Heard Shri Kingar on behalf of the petitioner. The petitioner has preferred this petition under Article 226/227 of the Constitution of India being aggrieved by order dated 20.10.2004 passed by learned 3rd Additional District Judge, Raipur whereby the application filed by the petitioner herein under Order 16 Rule 1 read with Section 151 of CPC has been rejected. Brief facts leading to filing of this writ petition are that the petitioner herein has filed a civil suit against the respondents to declare the sale deed executed on 28.6.2002 by defendant No.1 in favour of defendant No.3 as null and void and same is not binding on the plaintiff; to declare that based on the three sale deeds executed in respect of the land bearing Khasra No.651/4 admeasuring 0.511 hectare by defendant No.2 in favour of the plaintiff, as a power of attorney holder of	

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defendant No.1, the plaintiff is the owner of the said land and is in possession of the same and further a permanent injunction be granted in favour of the plaintiff that defendants or their legal heirs should not interfere with the possession of the plaintiff.

Defendants have filed their written statement, issues were framed and thereafter, the matter was fixed for evidence of the plaintiff.

Perusal of the impugned order reveals that on the date of framing of issues the plaintiff made it clear that he wants to produce three witnesses only, therefore, no list of witnesses was ~~produced~~ filed by the petitioner and thereafter for adducing evidence the petitioner took three dates i.e. 20.4.2004, 22.4.2004 & 20.6.2004. On 11.10.2004 when the Presiding Officer was on leave, learned counsel for the plaintiff filed an application for summoning of the witnesses on the ground that by mistake list of witnesses was not filed and the witnesses to whom petitioner wanted to examine are the government servants being officials of Sub-registrar office, State Bank of India and Police Station, Gole Bazar, Raipur therefore, it has become necessary to summon them. Accordingly, it was requested that they may be summoned through the Court and list of witnesses be taken on record. However, learned trial Court rejected

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the prayer and held that merely by mentioning that by mistake the list of witnesses was not filed, the application cannot be allowed.

Shri Kingar, counsel for the petitioner argued that when the petitioner was required to file the list of witnesses, on that date without realizing the factual position, he thought that the witnesses will come and give their evidence, that is why list of witnesses was not filed, but later on when he approached them, being Government servants, they denied to come and give their evidence unless they are summoned through the Court. In the circumstances, under the bona fide belief the petitioner had not furnished the list and therefore, learned trial court ought to have allowed the petitioner to summon those witnesses through Court after taking list of witnesses on record. He further submits that now at this stage he does not press for six witnesses and in order to prove his case he wants to adduce the evidence of only three witnesses namely the plaintiff himself, one witness along with record from the State Bank of India to prove that the petitioner had issued cheque in favour of defendant Nos.1 & 2 and payment was made to them by that cheque and lastly the official of the police station Gole Bazar, Raipur to prove the acknowledgement executed by the defendants which was submitted by him

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to the police along with the complaint. He further submits that if these witnesses are not allowed to be examined then the petitioner's case fail for no reason.

In this connection as per provisions of sub-rule (1) of Rule 16 of the Code of the Civil Procedure, 1908 "*on or before such date as the court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties are required to furnish the list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court'.* Sub-rule (3) of this Rule 1 further envisages that "*the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.*" Sub-rule 1(A) further envisages that "*subject to provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.*"

In view of the above provisions there is no bar in accepting the list even after passing of 15 days from the date of framing of the issues provided that the party shows the sufficient cause for not filing the list in time

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and the court is entitled to allow the filing of list of witnesses in the cases where the court is satisfied with the explanation offered by the party and for this view, I am fortified by the judgment of Orrisa High Court reported in **AIR 1987 Orrisa 179 & AIR 1995 SC 1984**.

In the present case, as has been mentioned in the application that the witnesses which were to be examined by the plaintiff in order to prove his case are from the State Bank of India & Police Station, Gole Bazar, Raipur and further they are required to bring the documents, but being the government servants and government records unless they are summoned through the Court they are not able to come before the court and give their evidence. Therefore, the ground ~~shows~~ raised by the petitioner herein appears to be bona fide & genuine and in the interest of justice the trial court ought to have allowed the application filed by the petitioner herein.

In the result, the petition of the petitioner is allowed, impugned order is quashed, trial court is directed to allow the petitioner to examine himself, one witness from State Bank of India, Jai Stambh Chowk, Raipur and one witness from the Police Station, Gole Bazar, Raipur and for producing them, summons be issued to both the witnesses and Dasti be given to the

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petitioner herein to bring those witnesses and produce documents. Since the respondents have not put in their presence in spite of service, therefore there is no order as to cost.

Consequently, M.(W.)P. No.4720/04 & I.A. No.8833/04 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Roshan

(पीछे देखिये)